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May 21, 2025

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Notices

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The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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Agenda

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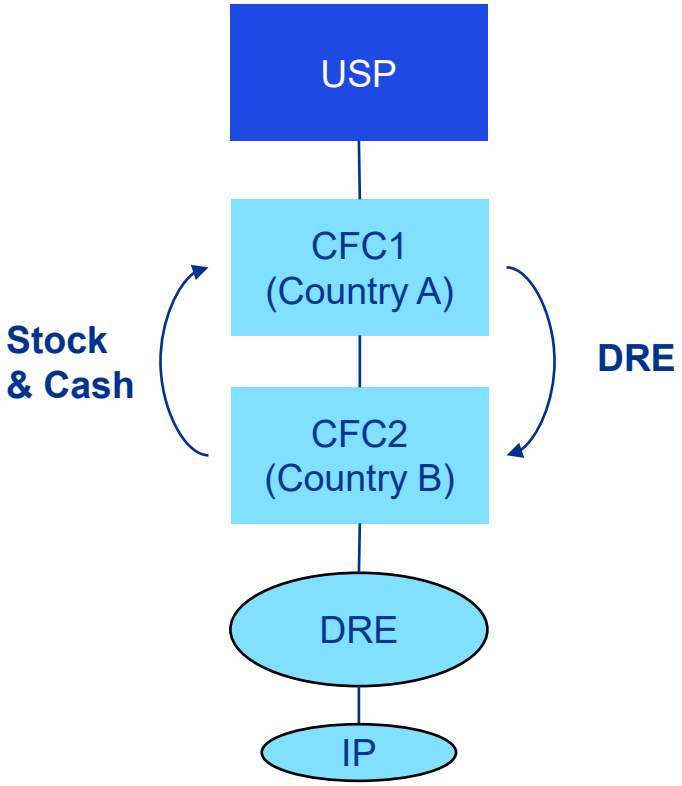
The “Soft” Doctrines

Out From Under Transactions

01

CAMT Proposed Regulations

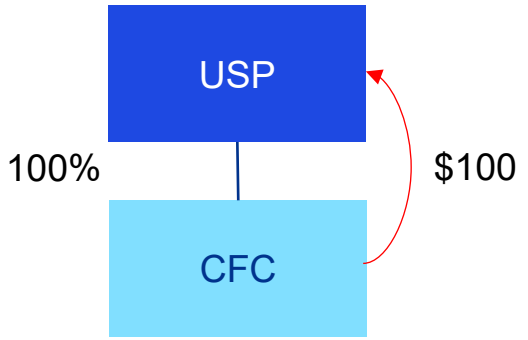
CAMT Proposed Regulations: Common Control Asset Transfer



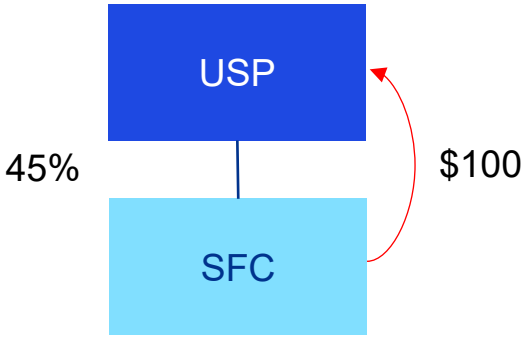
Facts / Assumptions

- CFC1 (in Ctry A) transfers DRE (a disregarded entity) that holds indefinite life IP (with built-in gain for US tax purposes) to CFC2 (in Ctry B) for CFC2 stock and cash.
  - For US tax purposes—
    - The transaction is treated as a Section 351 exchange of the IP with Section 351(b) "boot."
    - Going forward, CFC2 amortizes the IP under Section 197, and Country B taxes deemed paid by USP with respect to the IP income are subject to disallowance under Section 901(m).
  - For US GAAP purposes—
    - No book gain because the transaction is treated as a common control transaction.
    - The IP is not amortizable for book because the IP has an indefinite life.
  - For CAMT—
    - Under Prop. Reg. §1.56A-26(d), CFC1 recognizes AFSI even though no gain is recorded for US GAAP purposes, and gets a stepped-up basis for CAMT purposes.
    - Going forward, no amortization is permitted for the IP because Section 197 property is not generally amortizable for CAMT.

CAMT Proposed Regulations: Tax Replacement



Proposed Regulations



- Treasury and the IRS previously acknowledged that the interaction of Section 56A(c)(2)(C) and (c)(3) could give rise to the counting of the earnings of CFCs in AFSI of a US shareholder more than once when distributions are made by CFCs.
- Notice 2024-10 provided limited relief, allowing a Section 245A DRD only for Section 316 dividends resulting from actual distributions from CFCs (i.e., the general tax replacement theory). Under the Notice, USP would not be allowed a Section 245A DRD for a dividend from non-CFC specified foreign corporations (i.e., 10/50 companies)..
- The proposed regulations expands on the general tax replacement theory of Notice 2024-10, by allowing a Section 245A DRD in computing AFSI for all dividends under the Code, including deemed dividends under Sections 304, 367(b), and 1248 and dividends from 10/50 companies, to the extent a Section 245A DRD is permitted for regular tax purposes.
- Note that there is no “double counting” concern with respect to 10/50 dividends.

02

Proposed PTEP Regulations

Proposed PTEP Regulations: Overview

- The Proposed PTEP Regulations would require PTEP to be tracked both at the levels of both the shareholder and the foreign corporation, generally in a manner consistent with the rules announced in the 2019 Notice.
  - PTEP accounts would be required to be maintained at the shareholder level for every foreign corporation in which any US person except for domestic partnerships (any “Covered Shareholder”) owns stock, each relating to a single taxable year and a single Section 904 category (each, an “Annual PTEP Account”).
    - However, a Covered Shareholder can make a combined pool election to combine its existing separate-annual dollar basis pools and PTEP tax pools across years for each PTEP group and section 904 category within such group.
  - PTEP accounts and PTEP tax pools also would need to be maintained at the foreign corporation level. Corporate PTEP accounts relate to a single Covered Shareholder and PTEP within an account must be assigned to Section 904 categories and the PTEP groups.
- PTEP account maintained on a shareholder-by-shareholder, rather than share-by-share, basis.
  - PTEP accounts can be shared across members of a consolidated group.
- Successor rules for determining when a US shareholder succeeds to the PTEP account of a predecessor owner, including through interviewing ownership.
- The Proposed PTEP Regulations were issued on December 2, 2024, but are generally effective only after finalization, except for certain rules announced in Notice 2019-1.
  - No reliance permitted, but once finalized, taxpayers may elect to apply the rules retroactive to open years, with consistency in application.

Proposed PTEP Regulations: PTEP Distributions

- The Proposed Regulations would exclude a PTEP distribution to a Covered Shareholder or another CFC (including an unrelated CFC) from the gross income of the recipient.
  - This exclusion would apply for purposes of determining a CFC recipient's subpart F and tested income.
- PTEP is treated as distributed only when a distribution constitutes a dividend under Section 316.
  - Thus, a distribution by an entity with no E&P (including a deficit) is not out of PTEP, but rather a recovery of basis under Section 301(c)(2).
- PTEP distribution in each Covered Distribution treated as made pro rata over all shares with respect to which the distribution is made.
- PTEP generally treated as distributed on a LIFO basis, with exception for Section 965 PTEP.
- CFC's with split ownership.
  - The Proposed Regulations would limit the amount subject to exclusion under Section 959(b) (for purposes of determining the amount of the CFC inclusions of a Covered Shareholder) to the PTEP of the distributing CFC with respect to such Covered Shareholder.
  - Departure from the "gross-up" approach in Rev. Rul. 82-16, but taxpayers may continue to rely on Rev. Rul. 82-16 pending finalization of the Proposed Regulations.
  - The approach in the Proposed Regulations generally obtains the same result as the Rev. Rul. 82-16, just through a different methodology.

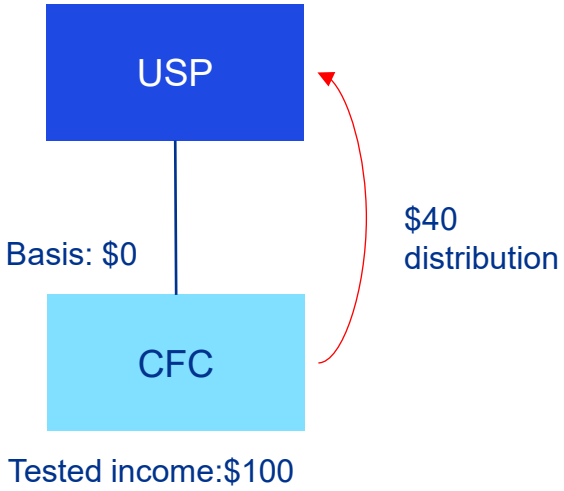
Proposed PTEP Regulations: PTEP Basis

- Basis adjustments made with respect to three types of property units:
    1. Section 961(a) ownership units (stock or property directly owned),
    2. Section 961(c) ownership units (stock owned by a CFC), and
    3. (3) derivative ownership units (stock owned by directly owned partnerships or partnerships owned through tiers of partnerships)
- No basis adjustment for interest in a partnership owned by a CFC or stock of a lower-tier CFC owned by that partnership.
- PTEP basis maintained on a share-by-share basis.
    - No sharing across shares in a single entity.
    - No sharing across members of a consolidated group.
- CFCs held through partnerships – derived basis.
    - For CFCs held by US shareholders through a partnership, the partnership tracks both its actual (common basis) in the stock of the CFC and “derived basis” for each US shareholder reflecting inclusions at the partner level for CFC items.
    - Adjustments are then made upon a disposition of the partnership’s interest in the CFC so the US shareholder is able to utilize its derived basis in determining the consequences to it as a result of the disposition.
- Timing of adjustments to PTEP basis in respect of income inclusions and PTEP distributions generally aligned so as to prevent recognition of gain in respect of distribution of “current year PTEP.”

Proposed PTEP Regulations: Section 961(c) Basis

- Relevance of Section 961(c) basis
  - (Positive) Section 961(c) basis shelters gain – for both subpart F and GILTI purposes – upon a disposition of a lower-tier CFC.
  - Gain "sheltered" by Section 961(c) basis is treated as PTEP ("section 961 PTEP"), which generally "mirrors" the character of the underlying PTEP ("mirrored PTEP").
- "Negative Section 961(c)"
  - Distributions of PTEP by a lower-tier CFC to an upper-tier CFC can give rise to negative Section 961(c) basis to the extent the Section 959(b) distribution exceeds Section 961(c) basis, but the negative Section 961(c) basis cannot exceed "other" basis.
  - Section 959(b) distributions in excess of Section 961(c) basis can give rise to income recognition either at the time of the distribution or upon a disposition of the lower-tier CFC.
- Positive Section 961(c) basis can give rise to a loss only to the extent of gain in other shares of the disposed-of CFC; cannot give rise to a loss that offsets gain from the disposition of a different CFC.

Example 2: Timing of 961 Basis Adjustment



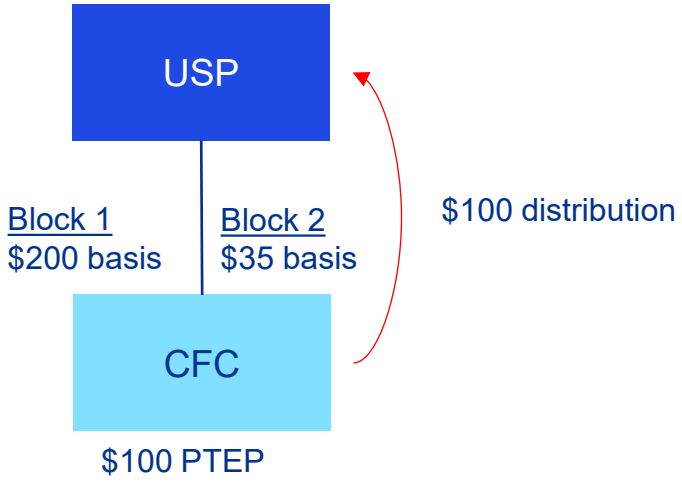
Facts

- CFC has no accumulated E&P at the beginning of the taxable year.
- USP has $0 basis in the stock of CFC as of the beginning of the taxable year.
- CFC earns $100 of tested income during the year, all of which will be treated as GILTI.
- At mid-year, CFC distributes $40 to USP.

Analysis under the Proposed PTEP Regulations

- Prop. Reg. §§1.961-3(c)(3) and (d): Increase basis by the amount of the reduction for the distribution as of the beginning of the first day of the taxable year OR immediately after the last "midyear transaction" (a sale, exchange, or other disposition of CFC stock) prior to the distribution.
- See also AM-2023-002 (April 7, 2023); PLR 202304008 (Jan. 27, 2023), permitting the Section 961(a) basis increase to be taken into account when determining Section 961(b) gain, if any.

Example 2: PTEP Distributions w/r/t Multiple Blocks



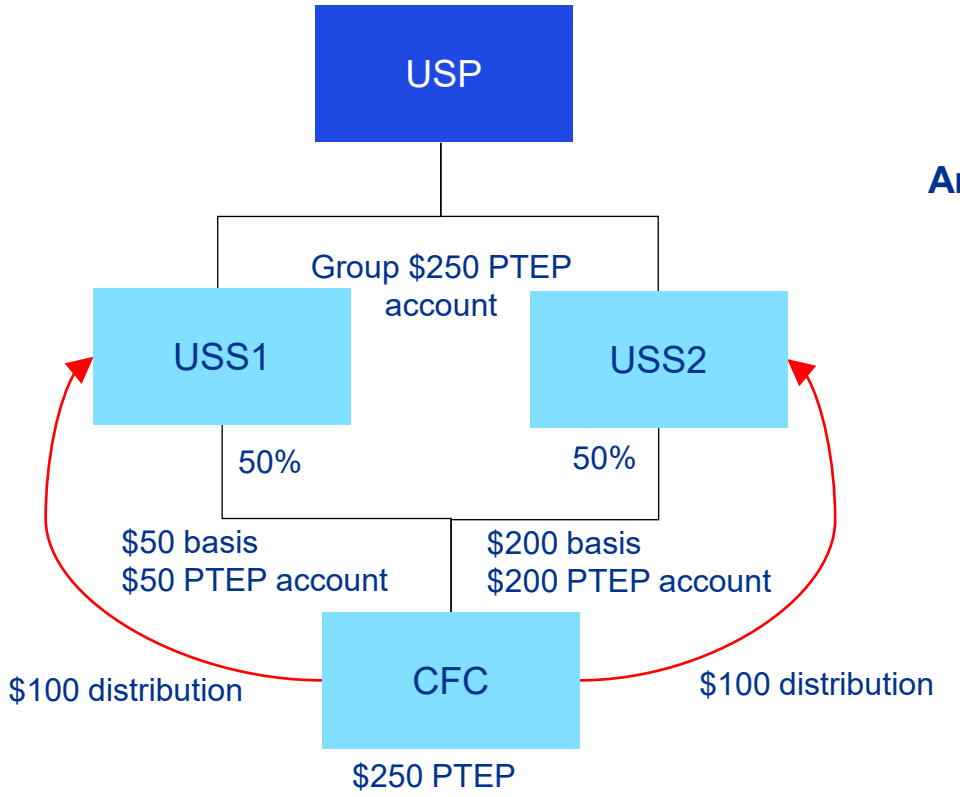
Facts

- In Year 1, USP owns CFC, which has two blocks of stock. Block1 has a basis of $200 ($75 by reason of §961(a)) and Block2 has a basis of $35 ($25 by reason of §961(a)). CFC has $100 of PTEP. Each block has the same fair market value.
- In Year 2, the CFC makes a $100 distribution to USP.

Analysis under the Proposed PTEP Regulations

- USP excludes the $100 from income as a distribution of PTEP.
- USP allocates the basis reduction pro rata between each block, reducing its basis in Block1 by $50, from $200 to $150, and its basis in Block2 by $50x, from $35x to $0x, recognizing $15x gain.
  - No basis in the Block1 shares is shifted to the Block2 shares. See Prop. Reg. §1.961-4(b)(2)(iii) and (f)(1).
  - The withdrawn 2006 proposed regulations would have allowed basis from Block 1 to shift to Block 2 to avoid uneconomic and accelerated gain which may be recognized under the proposed regulations.

Example 3: PTEP Distributions to Multiple Shareholders in Consolidated Group



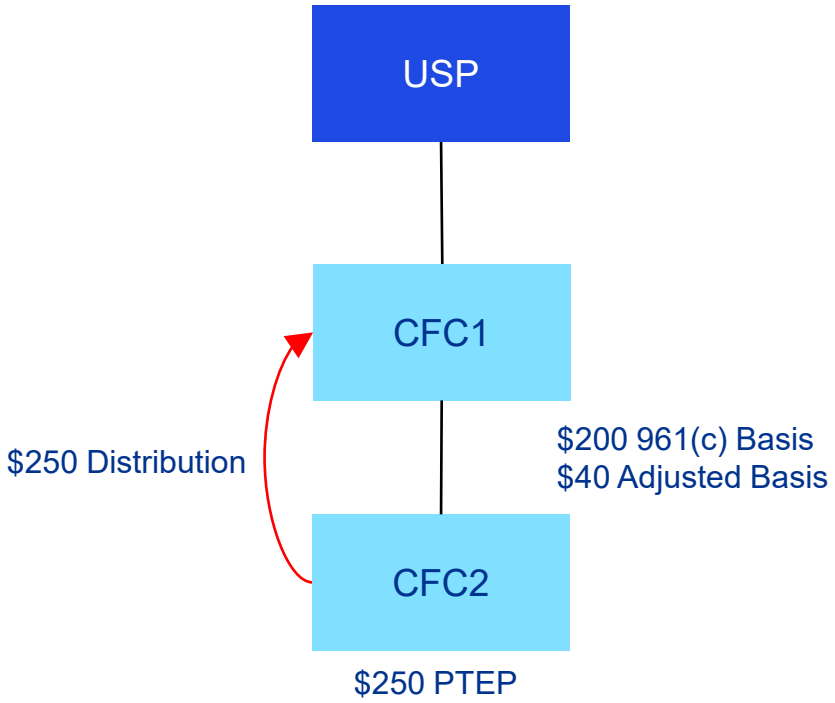
Facts

- USS1 and USS2 each own 50% of CFC.
- USS1 has a $50 PTEP account and $50 of basis, and USS2 has a $200 PTEP account and $200 of basis w/r/t its stock in CFC.
- CFC distributes $200 pro rata -- $100 to each of USS1 and USS2.

Analysis under the Proposed PTEP Regulations

- Group treated as a single corporation for purposes of determining exclusion under Section 959(a) and Prop. Reg. §1.959-4. Prop. Reg. §1.1502-59(c)(2).
- The $200 distribution to the USP group is entirely out of PTEP. Prop. Reg. §1.959-4(d)(2) and (e).
- USS1 and USS2 each exclude the entire $100 PTEP distribution. Prop. Reg. §1.959-4(b)(1) and Prop. Reg. §1.1502-59(c)(4)(ii).
- USS1 reduces its basis in CFC by $50 and recognizes $50 of gain for the $100 PTEP distribution.
- USS2 reduces its basis in CFC by $100 for the $100 PTEP distribution and retains $100 of basis in CFC after the distribution.

Example 4 – Negative Section 961(c) Basis and Section 961(c) Gain



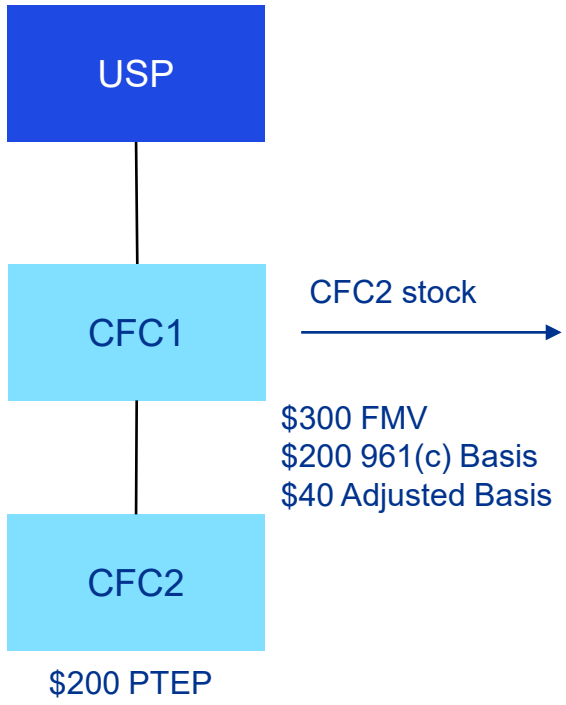
Facts

- CFC2 distributes $250 to CFC1.

Analysis under the Proposed PTEP Regulations

- CFC1's Section 961(c) basis is reduced by $240, resulting in negative 961(c) basis of $40.
- USP recognizes $10 of income with respect to the PTEP distribution.
- USP would recognize an additional $40 of gain for subpart F or tested income purposes upon a disposition of CFC2 or if the CFC2 stock otherwise ceases to be a Section 961(c) ownership unit (e.g., if CFC1 liquidates).

Example 5: Sale of Lower-Tier CFC with Section 961(c) Basis



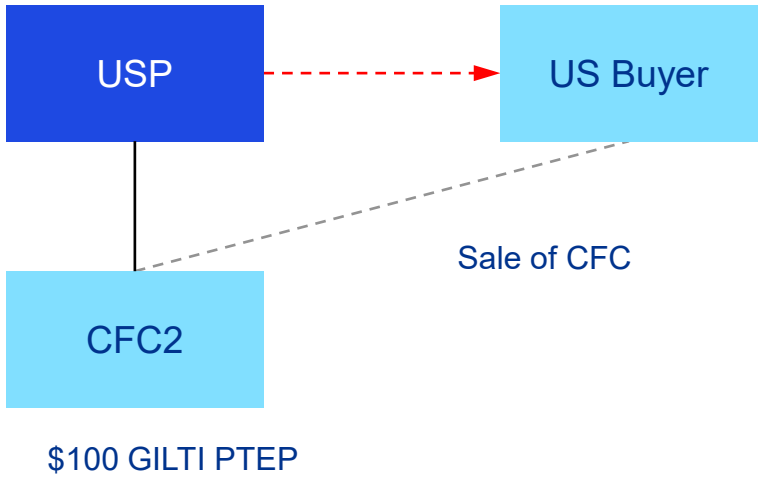
Facts

- CFC1 sells all of the stock of CFC2 to an unrelated buyer for $300.

Analysis under the Proposed PTEP Regulations

- CFC1 recognizes capital gain of $260.
- $60 of the gain is subpart F income.
- $200 of the gain is treated as PTEP, the character of which "mirrors" the PTEP at CFC2 that gave rise to the 961(c) basis.
- None of the gain is tested income.
- Note: If CFC1 had $270 of Section 961(c) basis in CFC2 (and CFC2 had $270 of PTEP), under the proposed regulations, CFC1 would not recognize a loss with respect to the sale of CFC2 (compare results under the proposed CAMT regulations).

Example 6: General Successor Transactions



Facts

- USP, a domestic corporation, wholly owns CFC 1. CFC 1 has $100 of GILTI PTEP.
- USP Sells CFC to US Buyer.

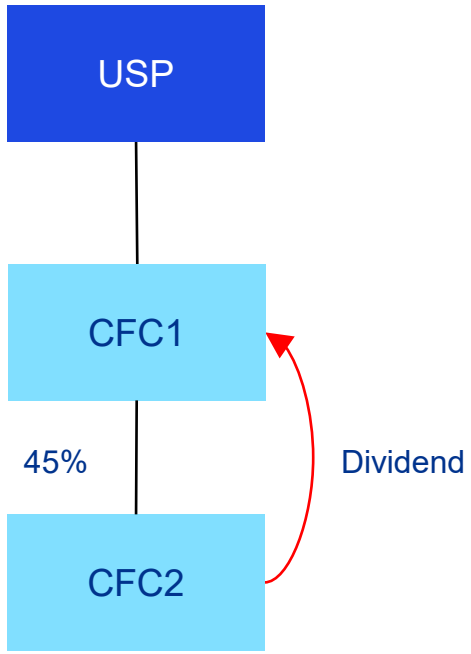
Analysis under the Proposed PTEP Regulations

- It appears that succeeding to PTEP under the current regulations is elective. Thus, if US Buyer fails to substantiate CFC's PTEP, a distribution from CFC out of its E&P to US Buyer would appear to be eligible for a Section 245A DRD.
- The proposed PTEP regulations, however, would make the transfer of PTEP in any "general successor transaction" (generally including most transfers of stock, with some exceptions) between two covered shareholders (i.e., US persons who are not domestic partnerships) automatic. See Prop. Regs. § 1.959-7(a).
- Thus, US Buyer would automatically succeed to CFC's $100 of GILTI PTEP, and a distribution out of CFC's E&P would reduce US Buyer's basis in CFC under Section 961(b).
- This automatic transfer of PTEP also applies where there is intervening foreign ownership under the "deemed covered shareholder" rules.

03

Section 245A Guidance

CCA 202436010: Application of Section 245A(a) to Dividends Received by a CFC



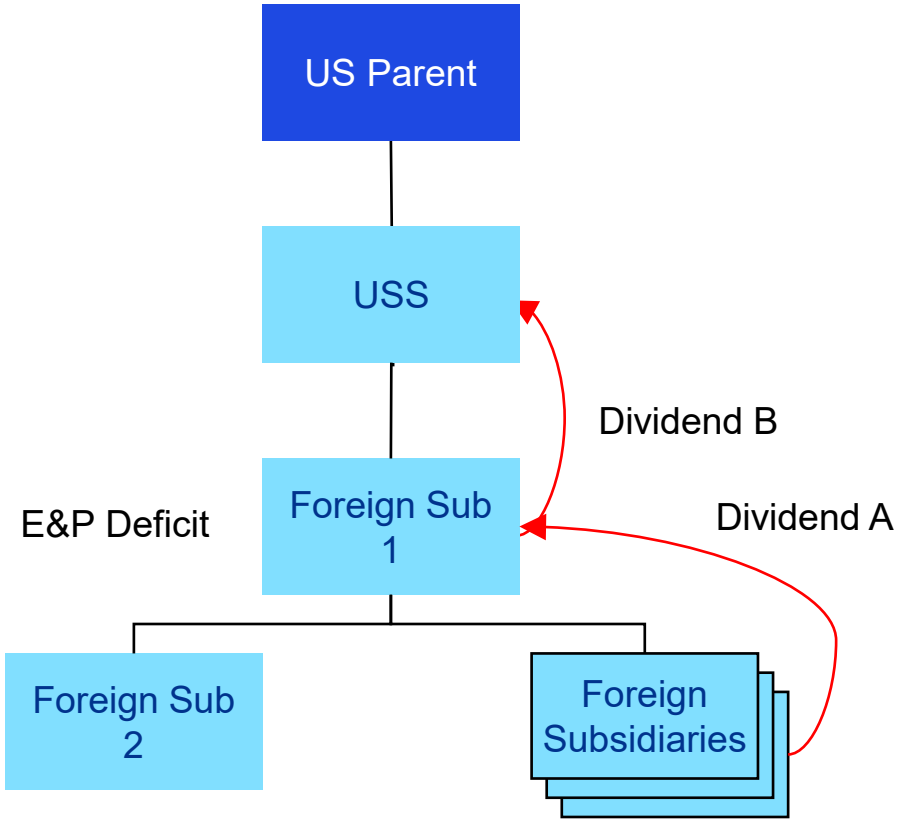
Facts

- USP, a domestic corporation, wholly owns FC1, a CFC.
- FC1 owns 45% of FC2, a 10%-owned specified foreign corporation ("SFC").
- FC1 receives a dividend from FC2.

Analysis

- The IRS concluded, relying predominately on the plain language of Section 245A(a), that FC1 is not allowed a Section 245A deduction for the dividend) because FC1 is not a "domestic corporation" and is not a "United States shareholder" with respect to FC2.
- The IRS asserted that FN 1486 in the TCJA Conference Report, which indicated that a CFC treated as a domestic corporation under Reg. § 1.952-2 could claim a Section 245A DRD, is contrary to the plain language of the statute and represents a misreading of the regulation.
- *See also* PLR 200952031 which concludes that a CFC was eligible for a Section 243 DRD, but not treated as a domestic corporation that was a member of an affiliated group for purposes of the 100% DRD.

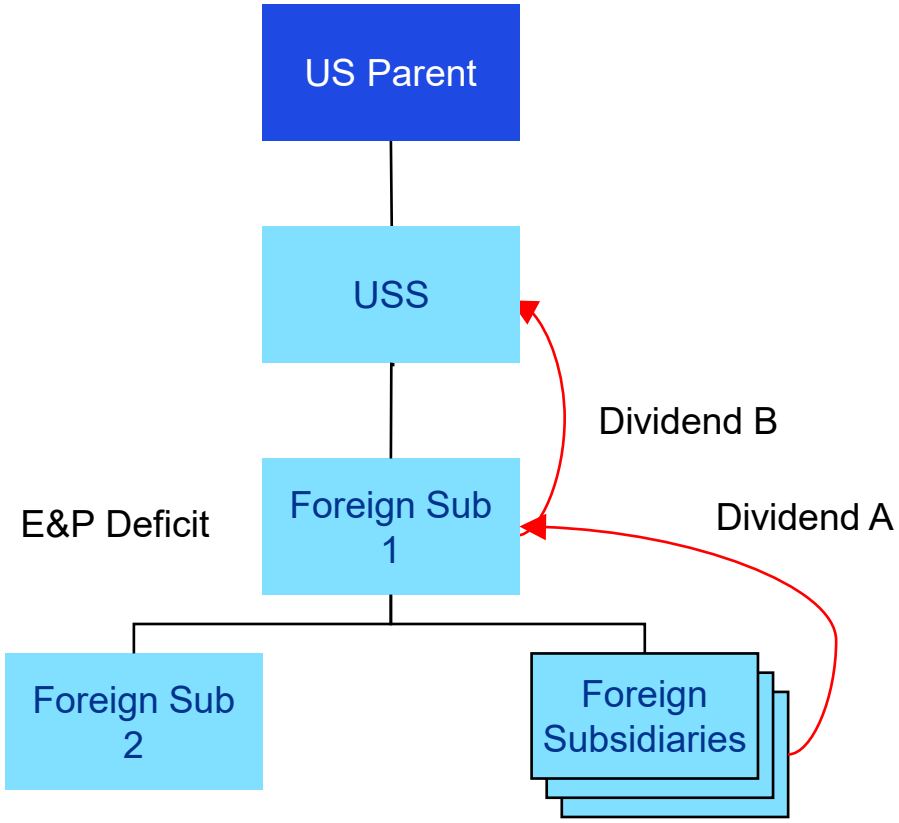
PLR 202504005



Facts

- US Parent wholly owns US Sub.
- US Sub wholly owns Foreign Sub 1 and other Foreign CFCs.
- In Year 1, as a result of a transaction, Foreign Sub 1 recognized a loss that created an E&P deficit in the passive category but Foreign Sub 1 has general category income greater than the E&P deficit.
- In Year 2, Foreign Sub 2 liquidated into Foreign Sub 1, resulting in a hovering deficit in Foreign Sub 1, pursuant to Reg. § 1 .367(b)-7.
- In Year 3, the Foreign CFCs will pay a dividend to Foreign Sub 1 (“Dividend A”) and Foreign Sub 1 will pay a dividend to US Sub (“Dividend B”).

PLR 202504005 (Cont.)



Analysis

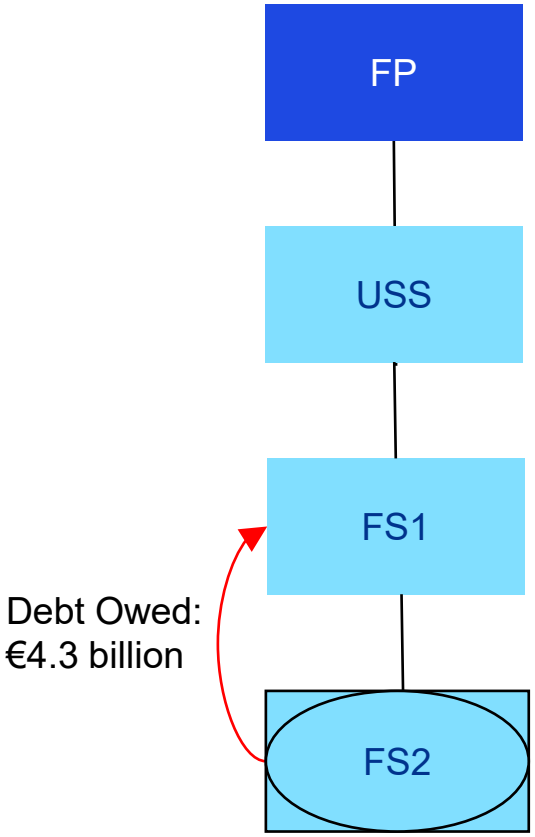
- For the purposes of the Section 245A DRD the foreign-source portion of a dividend = Dividend x (Undistributed Foreign Earnings / Undistributed Earnings) (the "Section 245A fraction").
- Undistributed Foreign Earnings = undistributed earnings not attributable to:
- ECI (Section 245A(c)(3)(A)), or
- Dividends from 80%-owned domestic corporations), including RICs and REITs (Section 245A(c)(3)(B)).
- Undistributed Earnings = E&P (computed in accordance with Sections 964(a) and 986) as of the close of the year, unreduced by dividends during the year (Section 245A(c)(2)).
- There is a concern that in the case of a "nimble dividend" (i.e., where a deficit in accumulated E&P is equal to, or in excess of, current E&P), because Undistributed Earnings, the denominator in the Section 245A fraction, is negative, such a dividend may not be eligible for a Section 245A DRD.
- The IRS concluded that Foreign Sub 1's hovering deficit is not taken into account in computing Foreign Sub 1's Undistributed Earnings for the purposes of Section 245(c) (i.e., it does not reduce Undistributed Earnings).
- In the PLR, the taxpayer represented that the liquidation of Foreign Sub 2 was not related to or part of a plan including Dividend A and B.

03

The “Soft” Doctrines

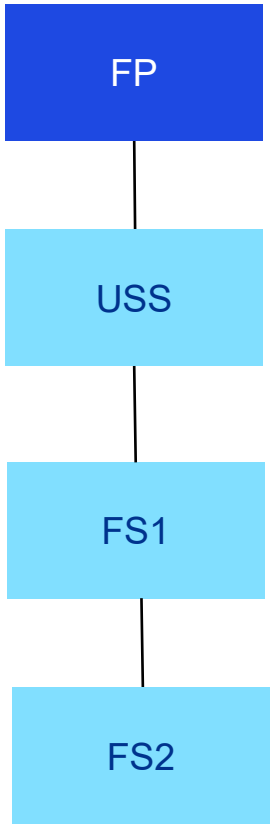
Liberty Global v. United States: The Simplified Transaction

Step 1



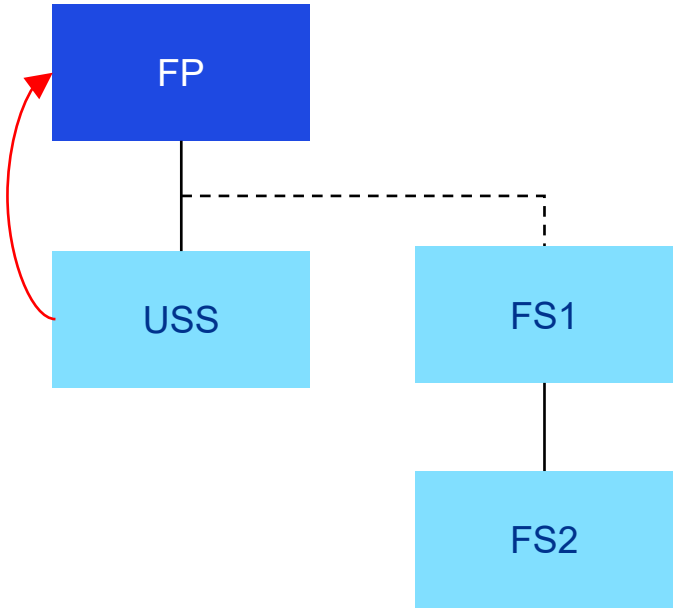
FS2 distributes a note to FS1

Step 3



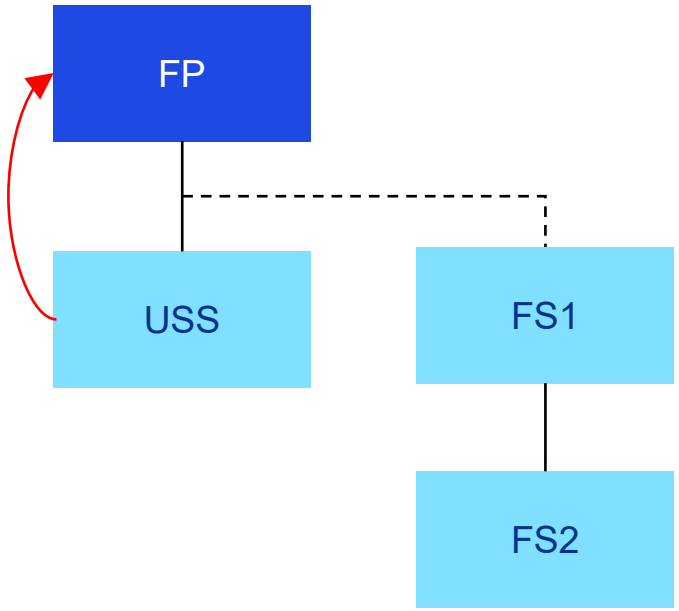
FS2 converts into an entity that is regarded for US tax purposes (i.e., a CFC).

Step 4



USS sells FS1 to FP.

Liberty Global v. United States: LGI's Position

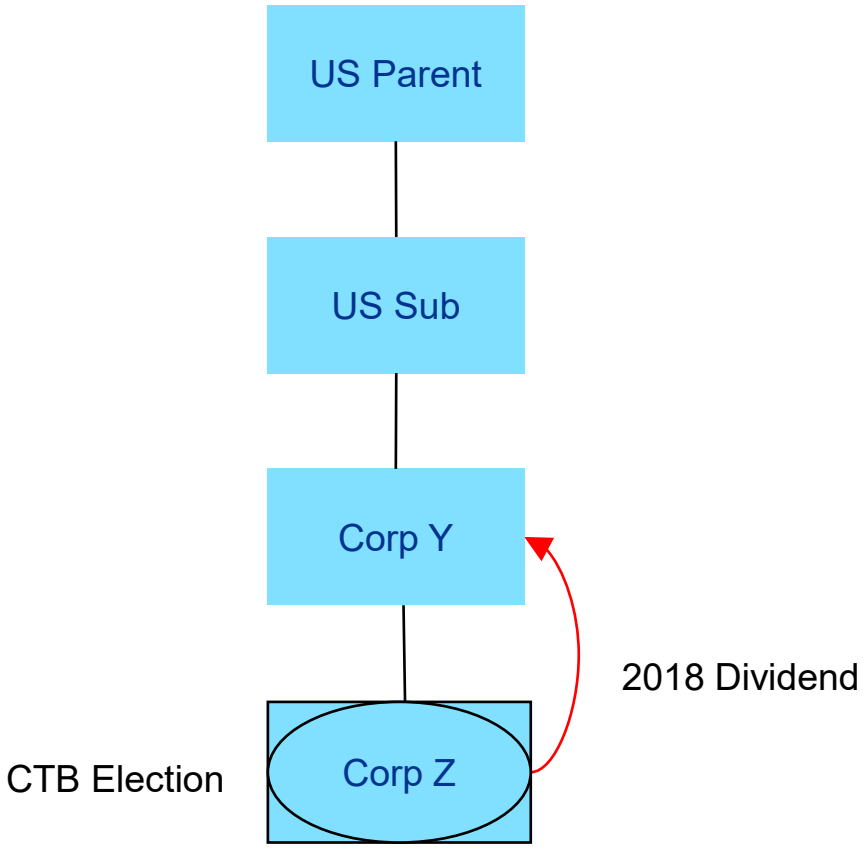


- In step 1, FS1 generated tested income. However, under Section 951(a)(2), USS's pro rata share of such income was zero because it did not own FS1 on the last day of the year that FS1 was a CFC by reason of the repeal of Section 958(b)(4).
- Pursuant to Section 1248(a), USS's gain from the sale of FS1 was treated as a dividend to the extent of FS1's earnings and profits (step 1 having created E&P). USS claimed a Section 245A DRD with respect to this income.
- The IRS denied the claim under. Reg. § 1.245A-5T, which would have denied USS a Section 245A DRD with respect to the dividend because it had experienced an "extraordinary reduction" with respect to FS1 in the taxable year.
- In its April 2022 decision, the US District Court for the District of Colorado held Reg. § 1.245A-5T invalid for lack of notice and comment under the Administrative Procedure Act ("APA").

Liberty Global v. United States: The Economic Substance Doctrine

- In cross motions for summary judgement focused on economic substance:
- Liberty Global admitted specific steps in transaction had no non-tax purpose, but argued those steps involved decisions, i.e., conversion in entity form and issuance of debt, that are not relevant for ESD purposes.
- DOJ argued that even though these steps involve decisions that are not typically relevant for ESD purposes that general rule does not apply when the steps are part of a larger plan.
- In its November 2023 ruling the District Court used an "unusual" approach to parsing statutory language, which resulted in a broad interpretation of the ESD. In doing so, Judge R. Brooke Jackson made three holdings.
  - Rejecting Liberty Global's argument that economic substance should only apply to "relevant" steps the court found that no categorical exclusions on relevancy grounds: "[a]t the risk of tautology, I proceed with the conclusion that the economic substance doctrine applies when a transaction lacks economic substance."
  - The court held that the proper unit of analysis is "the transaction in aggregate," even if it could be said that the tax benefit at issue was "created" because of a particular step, concluding that transactions that are designed in a way to avoid Congressional intent should be found to lack economic substance.
  - Lastly, the court found that the exemptions to economic substance, particularly the basic business transaction exemption, did not apply citing Liberty Global's reliance on a sophisticated tax advisor and the complex nature of the transaction.
- For these reasons, the District Court held that Steps 1 to 3 of the TGH transaction were to be disregarded under the ESD; accordingly, the E&P generated in those steps could not be used to support the Section 245A DRD with respect to Step 4.
- Liberty Global has been appealed to 10th Circuit. Oral arguments occurred on November 19, 2024.

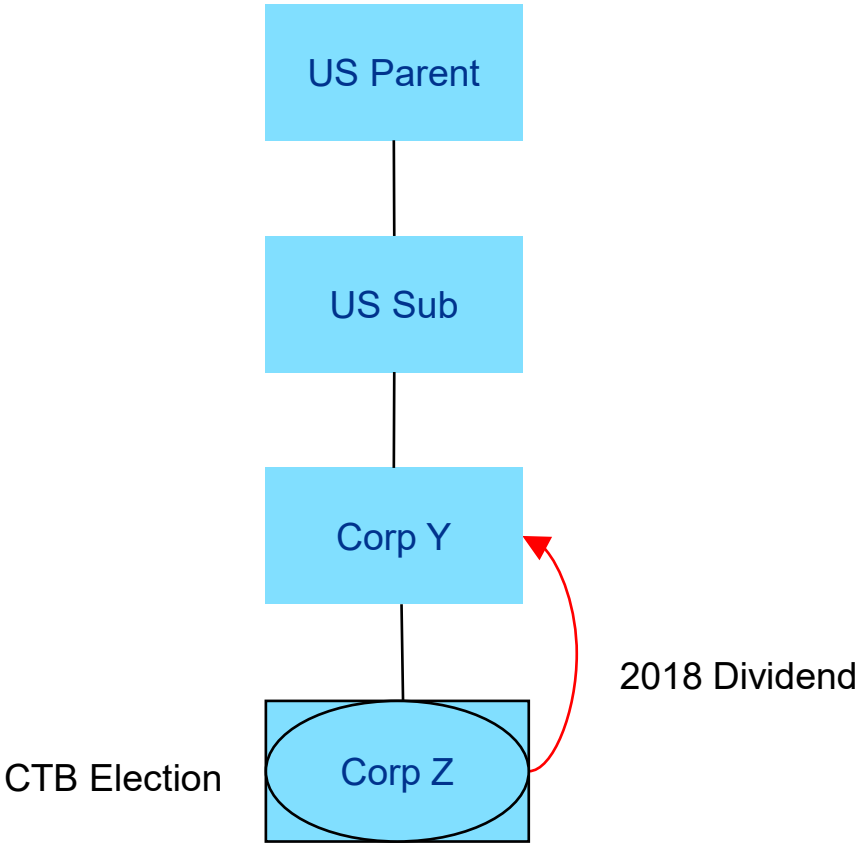
ILM 202501008: Facts



Facts

- US Parent, a domestic corporation, wholly owns US Sub. US Sub owns 100% of the shares of Corporation Y, a foreign corporation treated as a corporation for USFIT purposes (i.e., a CFC). US Parent, US Sub, and Corp Y are all calendar-year taxpayers.
- Company Z is wholly owned by Corp Y. In March 2018, Company Z made a CTB election to be treated as an association taxed a corporation, effective on December 30, 2017, thus becoming Corporation Z.
- Corporation Z elected to adopt a taxable year ending November 30 pursuant to Section 898(c)(2). Under that election, Corporation Z's first taxable year as a corporation ended on November 30, 2018.
- During the period from January 1, 2018, through November 30, 2018 (the “Gap Period”), Corporation Z earned ordinary course income from intercompany sales with Corporation Y (“Gap Income”).

ILM 202501008: Facts



Facts (cont.)

- US Sub took the position that the CTB Election followed by Corporation Z's purported adoption of a November 30 taxable year pursuant to Section 898(c)(2) caused the Gap Income to be excluded from US Sub's GILTI calculation under Section 951A because Section 951A did not apply to Corporation Z's first taxable year.
- At the end of its taxable year reported as ending November 30, 2018, Corporation Z paid a dividend to Corporation Y in the amount of $Z (the "2018 Dividend"), US sub took the position that the 2018 Dividend was excluded from Corporation Y's subpart F income under Section 954(c)(6).
- In 2020, Corporation Z changed its taxable year from a fiscal year ending November 30 to a calendar year end.
- The IRS concludes that Section 269(a)(1) applies with respect to the deemed incorporation of Corporation Z resulting from the CTB Election, thus permitting the IRS to disallow the Section 898(c)(2) election of a taxable year ending November 30, 2018, or provide for the allocation of the Gap Income to Corporation Y. In the alternative, the IRS concludes that Reg. §1.245A-5T applies to disallow look-through treatment under Section 954(c)(6).

ILM 202501008: Section 269 Analysis

- Section 269(a)(1) applies where (1) “any person or persons acquire, directly or indirectly, control of a corporation” (the “Acquisition Requirement”); and (2) “the principal purpose for which such acquisition was made is evasion or avoidance of Federal income tax by securing the benefit of a deduction, credit, or other allowance which such person or corporation would not otherwise enjoy” (the “Principal Purpose Requirement”).
- Because the CTB Election results in the deemed contribution of assets and liabilities to Corporation Z, pursuant to Reg. § 301.7701-3(g)(1)(iv), constituting the acquisition of indirect control of a corporation under Reg. § 1.269-1(c), the Acquisition Requirement is met.
- The ILM also concludes that the transaction satisfies the Principal Purpose Requirement for the following reasons.
  - Secured the benefit of an allowance. The IRS concludes that the Section 898(c)(2) election results in an "allowance" by excluding income for Corporation Z's initial CFC taxable year, based on legislative history, analogy to former surtax exemptions, and Reg. § 1.269-1(a), which defines an allowance as anything reducing tax liability, including deductions, credits, adjustments, exemptions, or exclusions.
  - Benefit that the taxpayer would not otherwise enjoy. By making the Section 898(c)(2) election for Corporation Z, US Sub benefited from excluding Gap Income from its GILTI inclusion, as Section 951A did not apply to Corporation Z until December 1, 2018. Accordingly, the IRS concludes that without the CTB Election, US Sub would have been unable to make the Section 898(c)(2) election, thus would not have enjoyed the benefit of excluding Corporation Z’s income from GILTI taxation.

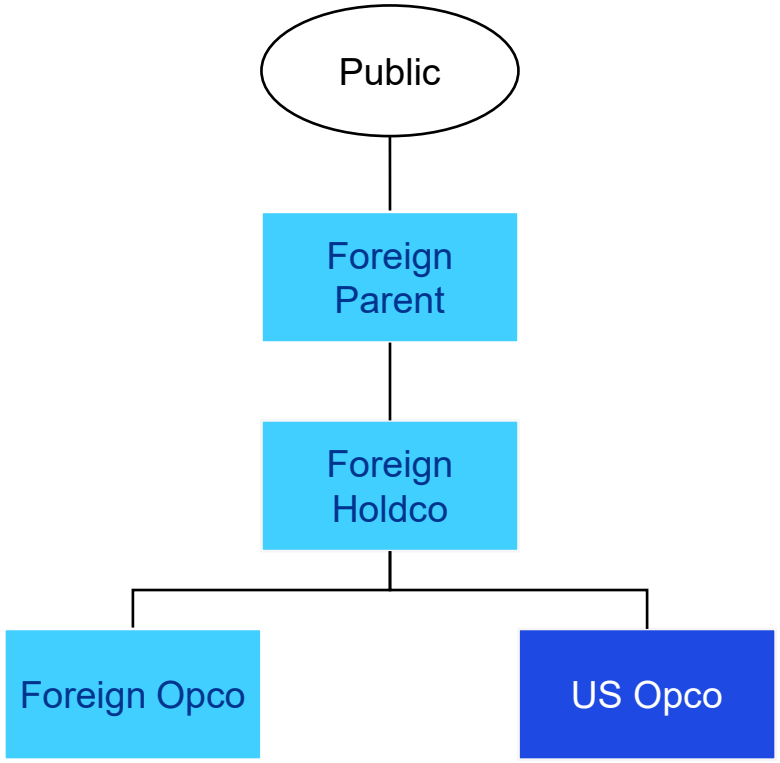
ILM 202501008: Section 269 Analysis

- Evasion or avoidance of Federal income tax. The legislative history of Section 269 includes within the scope of "evasion or avoidance" anything that results in the reduction of tax liability by distorting tax using a "tax avoidance device." The IRS concludes that the Section 898(c)(2) election constitutes such a device, citing to Section 898's statutory structure, legislative history, and IRS guidance aimed at preventing tax deferral abuse. The IRS also points out the fact that Corporation Z changed its tax year end after receiving the benefit of the Section 898(c)(2) election in making this conclusion.
- Principal purpose. The IRS concludes that US Sub's sole purpose in completing the CTB Election was the avoidance of tax. Although a business purpose is not required when making a CTB election generally, the IRS focuses on this in making their conclusion. Further, the IRS finds that the CTB Election and Section 898(c)(2) election was to permanently exclude Corporation Z's Gap Income from GILTI.

04

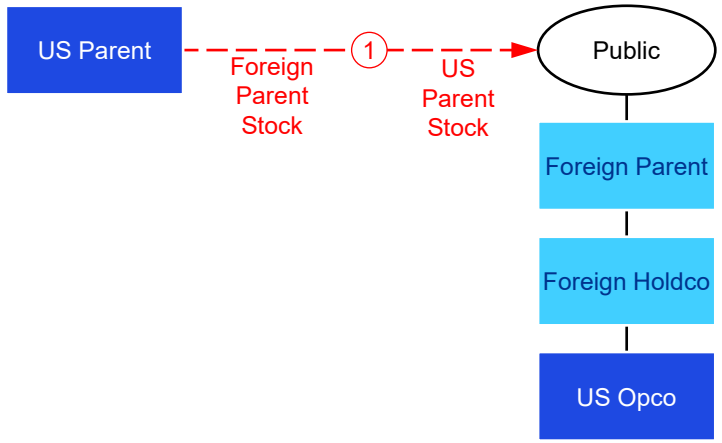
Out-From Under Transactions

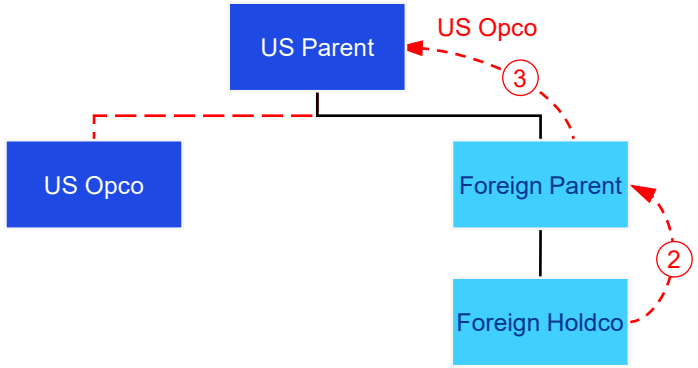
Sample Existing Structure



Notes:
[1] US OpCo is not subject to US FIRPTA rules.
[2] Neither Foreign Parent nor Foreign HoldCo is a CFC for US tax purposes.

Structure #1: Stock Reorganization, US Opco Distribution





Facts

1. US Parent acquires Foreign Parent solely in exchange for stock (legal mechanics to be determined).
2. Foreign Holdco distributes US Opco to Foreign Parent.
3. Foreign Parent distributes US Opco to US Parent.

Potential U.S. Tax Considerations

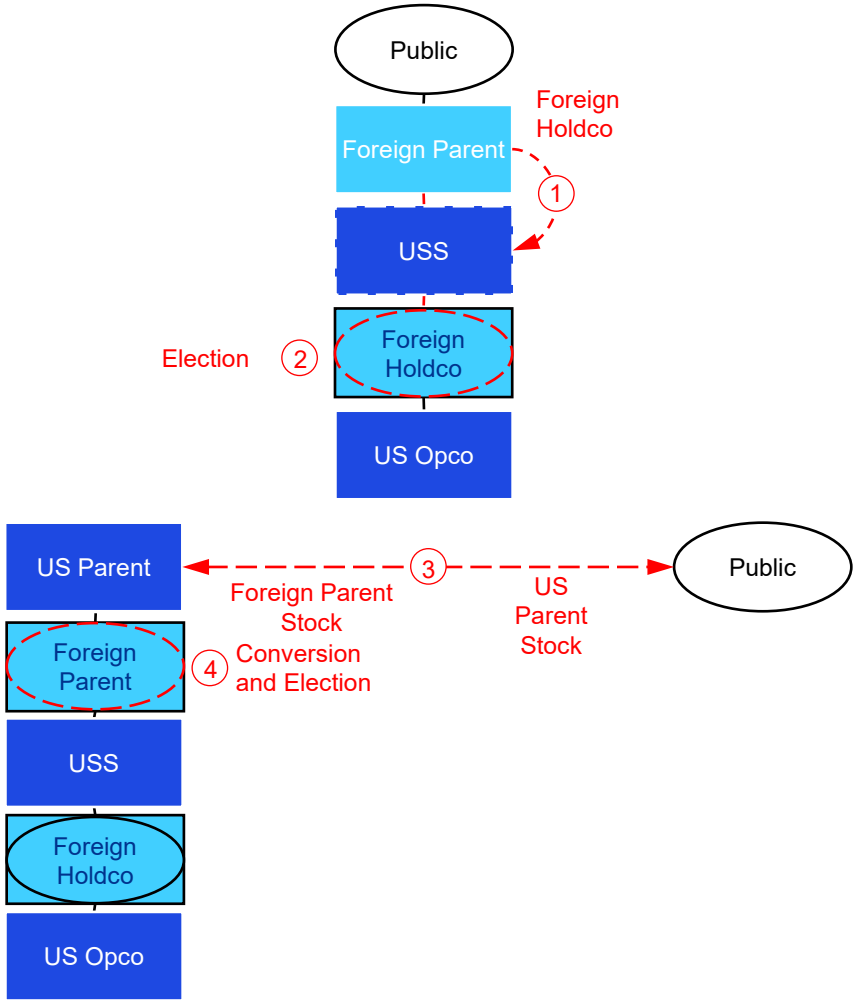
Pros

- The inefficient sandwich structure is eliminated. However, some taxpayers who have net operating losses or other tax attributes prefer leaving the deconsolidation in place.
- The distributions by Foreign Holdco and Foreign Parent are intended not to be subject to US tax.
- Depending on the facts, a deemed dividend from Foreign Parent to US Parent could result. The deemed dividend would be expected to qualify for the 100% Section 245A dividends received deduction, but Section 1059 gain should be considered

Cons

- If the distribution by Foreign Holdco or Foreign Parent does not qualify for US tax-free treatment, such distribution would be taxable at the distributing corporation level and possibly also at the distributee shareholder level.
- Any built-in gain in the US Opco stock would be subject to US tax at a 21-percent rate; timing the transactions to the end of Foreign Parent's and Foreign Holdco's US tax years can mitigate the US taxation of this built-in gain.
- Favorable US tax attributes (e.g., PTEP) are expected to substantially mitigate or eliminate any distributee shareholder taxation; timing of PTEP basis adjustments to be considered.
- Significant due diligence and analysis needed to conclude that the distributions by Foreign Parent and Foreign Holdco are not subject to US tax.

Structure #2: Migration via Asset Reorganization



Facts

1. Foreign Parent forms USS and transfers Foreign Holdco to USS.
2. Foreign Holdco files an election to be treated as a disregarded entity.
3. US Parent acquires Foreign Parent solely in exchange for stock (legal mechanics to be determined).
4. Foreign Parent converts to an eligible entity and files an election to be treated as a disregarded entity effective as of the date of the conversion.

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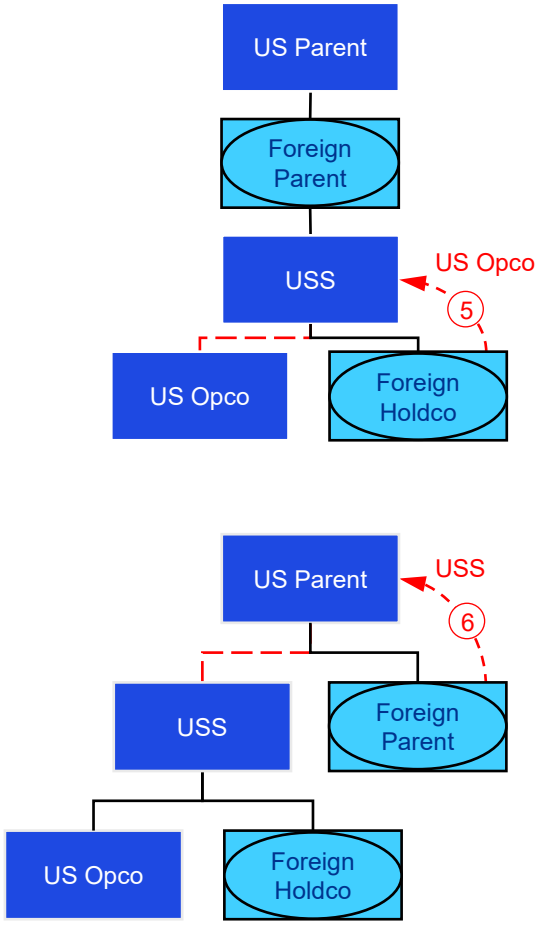
Structure #2: Migration via Asset Reorganization



Facts (cont.)

5. Foreign Holdco distributes US Opco to USS.
6. Foreign Parent distributes USS to US Parent.

- If desired, additional steps might be taken to recombine Foreign Parent and Foreign Holdco under USS. Alternatively, Foreign Parent or Foreign Holdco might be liquidated.

Potential U.S. Tax Considerations

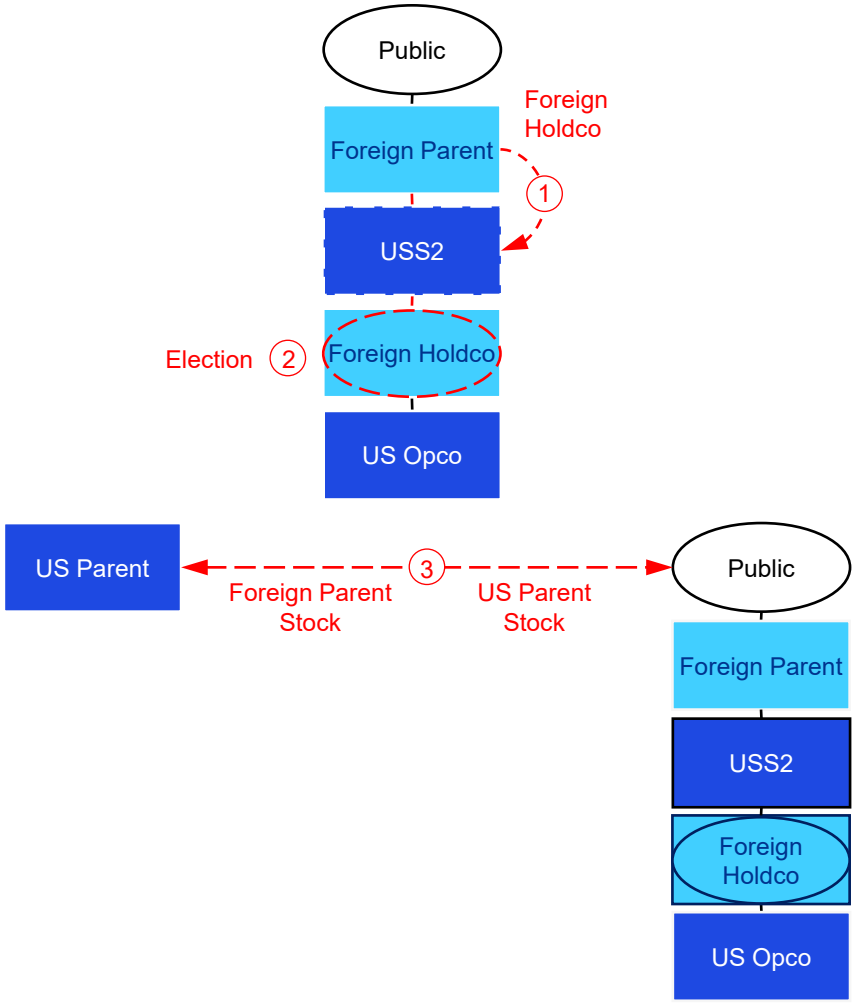
Pros

- The preparatory steps are intended to not be subject to US tax.
- Foreign shareholders and US shareholders of Foreign Parent that own less than $50,000 of Foreign Parent stock are intended to not be subject to US tax on the acquisition.
- US repositioning is expected to be tax-free from a US perspective.
- The inefficient sandwich structure is eliminated.

Cons

- US shareholders of Foreign Parent that own, directly, indirectly, or constructively, at least 10% of the vote or value of Foreign Parent ("10% US shareholders") recognize a deemed dividend equal to the "all E&P amount" attributable to their Foreign Parent stock
- All other US shareholders owning at least $50,000 of Foreign Parent stock ("significant US investors") recognize stock taxable at capital gains rates, unless they elect to recognize their "all E&P amount" deemed dividend (amount can be difficult to determine in most situations).

Structure #3: Stock Reorganization, Migration

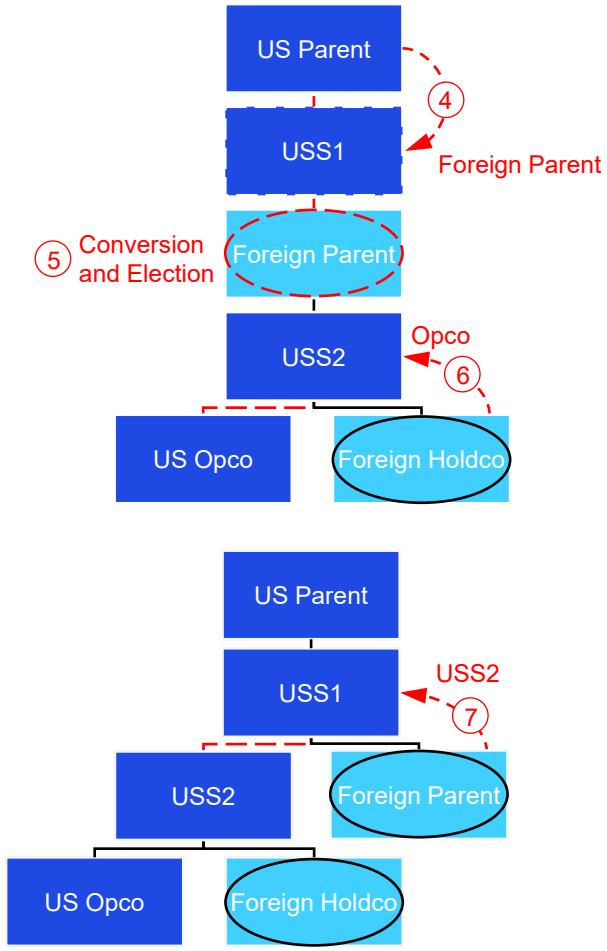


Facts

1. Foreign Parent forms USS2 and transfers Foreign Holdco to USS2.
2. Foreign Holdco files an election to be treated as a disregarded entity.
3. US Parent acquires Foreign Parent solely in exchange for stock (legal mechanics to be determined).

(Continued on next page)

Structure #3: Stock Reorganization, Migration



Facts (cont.)

4. US Parent forms USS1 and transfers Foreign Parent to USS1.
5. Foreign Parent converts to an eligible entity and files an election to be treated as a disregarded entity effective as of the date of the conversion.
6. Foreign Holdco distributes US Opco to USS2.
7. Foreign Parent distributes USS2 to USS1.

- If desired, additional steps might be taken to recombine Foreign Parent and Foreign Holdco under USS2. Alternatively, Foreign Parent or Foreign Holdco might be liquidated.
- Note: Consideration recast risk and potential mitigation strategies.

Potential U.S. Tax Considerations

Pros

- The preparatory steps are intended to not be subject to US tax.
- The public shareholders and Foreign Parent are not expected to be subject to US tax on the acquisition, where correctly implemented.
- The inefficient sandwich structure is eliminated.
- Distributions of US Opco and USS2 stock are expected to be disregarded for US tax purposes (and therefore not subject to US tax).
- In general, recombining Foreign Parent and Foreign Holdco or liquidating either or both of those entities is intended to not have any materially adverse US tax consequences.

Cons

- On the repositioning, US Parent would recognize dividend income equal to the “all E&P amount” attributable to its Foreign Parent stock taxable at 21% as a result of Steps 4 and 5 (but potential contrary position). US tax attribute studies and an assessment of Foreign Parent’s US shareholder base are needed to estimate the “all E&P amount” dividend recognized by US Parent.

04
Q&A

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